

AMENDED IN SENATE APRIL 25, 2002

**SENATE BILL**

**No. 1690**

**Introduced by Senator Margett**

February 21, 2002

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An act relating to criminal procedure, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1690, as amended, Margett. Criminal procedure: persons committed to medical facilities: study.

Existing law establishes procedures for determining a person found guilty by reason of insanity has been restored to sanity, and procedures for placing persons who have been committed to medical institutions by criminal procedures to obtain outpatient status.

This bill would direct the State Department of Mental Health to undertake a study regarding ~~the financial effect on counties of changing some of these procedures in prescribed ways~~ *alternative procedures to those in existing law*. This bill would require a report to the Legislature not later than January 1, 2003.

*This bill would declare findings by the Legislature.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. *The Legislature finds and declares all of the*  
2 *following:*

1     (a) Pursuant to Section 1026.2 of the Penal Code, there is  
2     currently a process for persons accused of committing a violent  
3     crime that results in death or great bodily injury and who are found  
4     not guilty by reason of insanity to be granted restoration of sanity  
5     through an annual hearing process.

6     (b) A minority of very ill patients fail to cooperate to work  
7     towards their rehabilitation through availing themselves of mental  
8     health treatment offered. Nevertheless, they file writs for  
9     restoration of sanity pursuant to Section 1026.2. This is an abuse  
10    of the process.

11    (c) The process set forth in Section 1026.2 works best when it  
12    is used by an individual, who has worked cooperatively on a  
13    continuous and regular basis towards rehabilitation, to request  
14    restoration of sanity based on that individual's own belief that  
15    rehabilitation work completed to date has been sufficient to reach  
16    sanity status.

17    (d) Abuse by uncooperative patients creates undue hardship  
18    and unnecessary posttraumatic stress for the families and friends  
19    of the victims, created in part by the abbreviated recurring  
20    one-year timeline for reapplication, and in part by the possibility  
21    of having friends and victims again testify in court proceedings.

22    (e) A minority of unrehabilitated patients applying pursuant to  
23    Section 1026.2 are successful in having their cause moved to the  
24    next step toward restoration of sanity. Specifically, they are placed  
25    in a Conditional Release Program, a program that, by its nature,  
26    allows contact with the public. It is not unusual for individuals in  
27    this category to subsequently fail and be returned to the hospital  
28    setting because they still suffer from a mental disease, defect, or  
29    deficiency that was not effectively mitigated in the hospital setting  
30    due to the patient's inability or unwillingness to do so. In addition,  
31    victims and families are again exposed to undue stresses during the  
32    applicant's stay in the Conditional Release Program.

33    (f) The abuse of the Section 1026.2 process constitutes an  
34    undue and unacceptable risk to the public safety.

35    (g) Changes in procedure are needed to effectively close the  
36    loophole of frivolous and nuisance filings for patients unwilling to  
37    participate on a continuous and regular basis in the full milieu of  
38    treatment services offered to them through the State Department of  
39    Mental Health.

1     (h) *Therefore, the Legislature finds that a study by the State*  
2 *Department of Mental Health is necessary to determine corrective*  
3 *procedures.*

4     SEC. 2. (a) The State Department of *Mental Health Services*  
5 shall undertake a study to determine ~~the fiscal effects on counties~~  
6 ~~if the following are implemented in the cases of persons accused~~  
7 ~~of committing a violent crime that results in death or great bodily~~  
8 ~~injury and are found not guilty by reason of insanity, and who are~~  
9 ~~filing an application for restoration of sanity; alternative~~  
10 *procedures for the process set forth in Section 1026.2 of the Penal*  
11 *Code that eliminate the potential for individuals accused of*  
12 *committing a violent crime that resulted in death or great bodily*  
13 *injury and who are found not guilty by reason of insanity from*  
14 *abusing the process. The study shall, at a minimum, consider the*  
15 *impacts of the following:*

16     (1) ~~The~~ *Increasing the minimum time for inpatient status is*  
17 *increased from 180 days to 365 days.*

18     (2) A requirement that the local mental health director concur  
19 in the restoration of sanity.

20     (3) A requirement that a patient ~~cooperate~~ *cooperatively,*  
21 *continuously, and regularly engage in treatment plans provided by*  
22 *both the state hospital and the local Conditional Release Program*  
23 *staff while in outpatient inpatient treatment.*

24     (4) An increase in the current one year time period for filing an  
25 application for a restoration of sanity hearing after a denial to *up*  
26 *to five years.*

27     (5) *Any cost avoidance, especially for counties and the courts,*  
28 *for cases that do not result in a significant number of days that an*  
29 *applicant spends in the Conditional Release Program.*

30     (b) The department shall issue the report of the findings of the  
31 study to the Legislature not later than January 1, 2003.

32     ~~SEC. 2.~~

33     SEC. 3. This act is an urgency statute necessary for the  
34 immediate preservation of the public peace, health, or safety  
35 within the meaning of Article IV of the Constitution and shall go  
36 into immediate effect. The facts constituting the necessity are:

37     In order to facilitate ~~the most effective~~ implementation of  
38 *corrective* procedures regarding outpatient and restoration of

1 sanity procedures, it is necessary that this act take immediate  
2 effect.

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